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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,578	03/09/2001	Patrick Hwu	2026-4341	6841

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LEYDIG, VOIT & MAYER, LTD.
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6731

EXAMINER	
LI, QIAN JANICE	

ART UNIT	PAPER NUMBER
1633	

MAIL DATE	DELIVERY MODE
12/19/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/803,578	**Applicant(s)** HWU ET AL.	
	Examiner Q. Janice Li, M.D.	**Art Unit** 1633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,4,7,8,10,40,41,44-46,52-61,71-76 and 79-93*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Q. JANICE LI, M.D.
PRIMARY EXAMINER

Q. Janice Li, M.D.
Primary Examiner
Art Unit: 1633

Continuation of 11. does NOT place the application in condition for allowance because: The amendment of the specification has not been entered because it does not in compliance with the rule (see MPEP 608.01q).

Claims 1, 7, 40, 41, 71, 72, 79-83, 92, 93 stand rejected under 35 U.S.C. 102(b) as being anticipated by Altenschmidt et al (J Immunol 1997;159:5509-15), for reasons of record and following.
In the remarks, the applicant argues figure 4 of the cited reference evidence the T cells of Altenschmidt et al do not comprise an endogenous T cell receptor, which has antigenic specificity for either HC11 or HC11 R2 target cells, because the T cells would have reactive to these cells.
In response, the claims do not limit the recited endogenous T-cell receptor to any specific type, as long as it is reactive with an (any) allogeneic cell. Thus, since HC11 or HC11 R2 are specifically reactive to ErB-B2 receptor, they may not lyse these cells when the endogenous T cells receptors are not ErB-B2 receptor. However, this is not to say other endogenous receptors are not present. Accordingly, the rejection stands for reasons of record.

Claims 1, 7, 40, 45, 52, 61, 71, 72, 76, 79-83, 87, 91-93 stand rejected under 35 U.S.C. 102(a) as being anticipated by Beecham et al (J Immunother 2000; 23:332-43), for reasons of record and following.
Applicant first point to the publication date of Beecham, which was not a 102(b) date. In response, it is noted Beecham is still a prior art.
Applicant submitted a declaration after final action, which has not been entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence was not earlier presented. See 37 CFR 1.116(e).
Applicant then argued inherency might not be established by probabilities. In response, indeed, the inherency has not been relied on the fact that there are non-specific killing of MIP-101 cells, rather, it was established by the general knowledge in the art (see e.g. Wikipedia). Thus, even if the non-specific killing was indeed as speculated by Beecham et al as the act of T-LAK cells, since T cell receptor gene is programmed in the genome of a T lymphocyte, every T cell has an endogenous T cell receptor which is capable of reactive to an allogenic cell, it is only a matter of which allogenic cell and which corresponding T cell, these are not limited by the claims. Thus, as long as a T cell is present, this limitation is met.

Claims 1, 7, 8, 40, 41, 45, 46, 52, 56, 58, 61, 71, 72, 75, 76, 79-83, 86, 87, 90-93 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Beecham et al (J Immunother 2000; 23:332-43), in view of Terheyden et al (J Immunol 2000;164:6633-9) and Munz et al (J Immunol 1999;162:25-34), for reasons of record and supra.

Claims 4, 10, 44, 53-55, 57, 59, 60, 73, 74, 84, 85, 88, 89 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Beecham et al (J Immunother 2000; 23:332-43), in view of Terheyden et al (J Immunol 2000;164:6633-9) and Munz et al (J Immunol 1999;162:25-34) as applied to Claims 1, 7, 8, 40, 41, 45, 46, 52, 56, 58, 61, 71, 72, 75, 76, 79-83, 86, 87, 90-93 above, and further in view of Nishimura et al (US Patent 5,830,755), for reasons of record and supra..